



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 30, 1998

Ms. Donna Garcia Davidson
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR98-1564

Dear Ms. Davidson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 116896.

The Office of the Governor received a request for information relating to the Texas Campus Crime Stoppers Annual Conference in Odessa and information concerning personnel within the Office of the Governor and the Texas Crime Stoppers Advisory Council. You have submitted three memoranda that are responsive to the request for memoranda discussing the conference. You contend that the submitted memoranda are excepted from required public disclosure by sections 552.101, 552.111, and 552.116 of the Government Code. As for the remaining requested information, you state that you are seeking clarification on those items. Thus, this ruling only addresses the submitted memoranda and the exceptions you claim.

First, you assert that section 552.116 excepts the memoranda from public disclosure as they are working papers used in an audit. Section 552.116 reads as follows:

An audit working paper or draft audit report of the state auditor or of another state agency or institution of higher education as defined by Section 61.003, Education Code, is excepted from [required public disclosure].

The Seventy-fifth Legislature amended section 552.116. Act of May 30, 1997, H.B. 2906, § 10, 75th Leg., R.S. The House Bill amending section 552.116 also amends Government Code section 321.001 to define the term "audit working paper" as

all documentary and other information prepared or maintained in conducting an audit or investigation, including all intra-agency and

interagency communications relating to an audit or investigation and all draft reports or portions thereof.

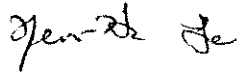
You state that “[t]he internal auditor is conducting an audit of the Crime Stoppers Section of the Criminal Justice Division of the Office of the Governor. As such, copies of these memos *may* be in her files. . . .” (Emphasis added.) If the memoranda are indeed used by the internal auditor, then the memoranda constitute “audit working paper[s]” as defined in Government Code section 321.001. As such, you may withhold the requested memoranda from the requestor based on section 552.116 of the Government Code. We will address your other claimed exceptions in the event the memoranda are not in the internal auditor’s files.

Section 552.111 excepts “an interagency or intra-agency memorandum or letter that would not be available by law to a party in litigation with the agency.” In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency’s policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. After examining your arguments and the submitted material, we do not believe that you have shown the applicability of section 552.111.

Furthermore, we do not believe that section 552.101 protects the requested information from disclosure. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” After reviewing the submitted materials and arguments, we do not believe that the requested information must be withheld based on a right of privacy. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) (common-law privacy); Open Records Decision No. 600 (1992) at 4 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986) (constitutional privacy)). Moreover, we do not find nor do you point to any statute that would deem the information confidential. Therefore, the requested information must be released unless, as we discussed above, the documents are in the internal auditor’s files.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Yen-Ha Le".

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref: ID# 116896

Enclosure: Submitted documents

cc: Ms. Susan Rogers
P.O. Box 13087
Odessa, Texas 79768
(w/o enclosure)